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No. 776

IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

JACQUES M. SCHIFFER,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

Petition for Rehearing

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By virtue of the denial of the petition for writ of certiorari in this cause, this Court will effectively permit the several district courts of the United States to impose punishment for criminal contempt, without a hearing, at the conclusion of a case, for acts unnoted at the time they occurred. Together then with this Court's decision in *Cheff* v. *Schnackenberg*, 16 L.Ed. 2d 629, it is thus possible for a district court to sentence a practicing attorney to

imprisonment for as much as 6 months, without a hearing, for actions never called to his attention until the moment of sentencing. This combined result is such to make the practice of law in an attorney's representation before a trial court fraught with hidden dangers.

In the instant case petitioner was totally unaware that any act or statement made or taken by him during a course of a seven week trial was considered by the court to be contemptuous of the court's dignity. Not until the case had been concluded was he advised that his actions which occurred long before were such as to subject him to imprisonment. Even if, as this court stated in *Cheff*, the proceedings imposing a sentence of less than six months are equivalent to "a procedure to prosecute a petty offense" 16 L.ed. 2d 629, 633, nevertheless, even those minimal procedural requirements were obviated here where no hearing was had whatsoever.

The purpose of informing or warning the contemnor is to effectuate the instantaneous action necessary to control the proceedings and thereby stop any further contemptuous conduct. It is, therefore, for that reason that the procedural safeguards of due process are permitted to be eliminated under Rule 42(a), Fed. R. Crim. P., and the immediate imposition of sentence for contempt, without a hearing, has been permitted. This court has concluded that if the trial court "believes the exigencies of the trial require that he defer judgment until its completion he may do so without extinguishing his powers."[1] However, where the speedy punishment permitted by Rule 42(a) has been deferred to the conclusion of the case and where such speedy action, eliminating the procedural requirements of due process, is necessary in order to achieve a summary

[1] *Sacher* v. *United States*, 343 U.S. 1, 11 (1952).

vindication of the Court's dignity and authority, postponement of immediate punishment must be done only in favor of a speedy notification. We have found no case comparable to the case at bar: where the due process requirement of a hearing was dispensed with; where punishment was postponed to the end of the trial; and, where the court did nothing at the time of the contempt—by warning or otherwise—to control the proceedings and vindicate its authority.

The import of both the speedy notification and immediate punishment is to immediately vindicate the dignity and authority of the court and prevent further violation. If, however, both speedy punishment and speedy notification are eliminated, there is no justification for denying the contemnor his procedural rights of due process and a hearing on the issues.

The denial of the petition for certiorari together with this court's opinion in *Cheff* creates an extraordinary extension of the elimination of due process. Unless this court lays down some precise standards, trial judges will be free to await "the close of the trial to pounce upon [counsel] for some offense unnoted at the time it occurred", (*Sacher v. United States*, 343 U.S. 1, 10, 11,) or noted so ambiguously as to constitute no notification whatsoever and thereupon impose sentences of up to six months in prison.

Petitioner earnestly requests that this court grant certiorari since the decision of the Court of Appeals has enlarged the scope of the contempt power by permitting the imposition of summary punishment, well after the need for immediate control of the proceedings has ended for acts unnoted at the time they occurred. The decision of the Court of Appeals raises a fundamental question of the extent to which procedural rights guaranteed by the Constitution may be superseded in cases of direct contempt.

CONCLUSION

Petitioner respectfully asks that this Court issue its writ of certiorari to the Court of Appeals for the Sixth Circuit to review the judgment of that Court entered in this cause.

Respectfully submitted,

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